

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**NATHAN J FOLEY**  
Claimant

**JOHN DEERE CONSTRUCTION EQUIPMEN**  
Employer

**APPEAL 21A-UI-03848-LJ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 10/27/19  
Claimant: Appellant (2)**

Iowa Code § 96.19(38) – Total, Partial, and Temporary Unemployment  
Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Code § 96.6(2) – Timeliness of Appeal

**STATEMENT OF THE CASE:**

On January 26, 2021, the claimant Nathan J. Foley filed an appeal from the July 17, 2020 (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was still employed at his same hours and wages and was therefore ineligible for benefits. The parties were properly notified of the hearing. A telephonic hearing was held on Thursday, April 15, 2021. The claimant, Nathan J. Foley, participated. The employer, John Deere Construction Equipment, registered a witness but did not answer when called for the hearing and did not participate. The administrative law judge took official notice of the administrative record.

**ISSUE:**

Did claimant Nathan J. Foley file a timely appeal?  
Was claimant Nathan J. Foley totally, partially or temporarily unemployed?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant has been employed full time, most recently as a laborer/assembler, with John Deere Construction Equipment since February 12 or 13, 2012. Claimant remains employed with this employer.

In late April 2020, claimant filed for unemployment insurance benefits because he was out of work due to COVID-19. Initially, claimant filed for benefits because his son was required to quarantine, as he had a symptom of the virus. When claimant reported this to the employer, the employer requested that claimant stay home from work for two weeks to ensure he did not potentially bring COVID-19 into the workplace. Claimant did as instructed. He then returned to work and worked a partial week during the week ending May 9, 2020.

For the next two weeks, the employer's entire workplace shut down due to COVID-19. There were many employees out of work at this time quarantining, and the employer closed the plant

in an effort to get a handle on conditions. Claimant would have preferred to work those two weeks, but there was no work available for him.

The unemployment insurance decision was mailed to the appellant's address of record on July 17, 2020. The appellant does not recall whether he received the decision at that time. Claimant then received the overpayment decision in January 2021, and he immediately appealed that decision.

## **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes as follows:

### **The first issue is whether claimant filed a timely appeal.**

Iowa Code § 96.6(2) provides, in pertinent part: “[u]nless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision.”

Iowa Admin. Code r. 871-24.35(1) provides:

1. Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:

(a) If transmitted via the United States Postal Service on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark of the envelope in which it is received; or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion.

(b) If transmitted via the State Identification Data Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES.

(c) If transmitted by any means other than [United States Postal Service or the State Identification Data Exchange System (SIDES)], on the date it is received by the division.

Iowa Admin. Code r. 871-24.35(2) provides:

2. The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and that the administrative law judge has no authority to change the decision of a representative if a timely appeal is not filed. *Franklin v. IDJS*, 277 N.W.2d 877, 881 (Iowa 1979). 00194 Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid. *Beardslee v. IDJS*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott* 319 N.W.2d 244, 247 (Iowa 1982).

Ms. Adams did not receive the decision in the mail and, therefore, could not file an appeal prior to the appeal deadline. The notice provision of the decision was invalid. However, Ms. Adams learned that she was not eligible for benefits in October 2020. Ms. Adams attempted to file an appeal then but the appeal did not go through. Ms. Adams did not file her appeal until at least a month later.

Mr. Adams' delay was not due to an error or misinformation from the Department or due to delay or other action of the United States Postal Service. No other good cause reason has been established for the delay. Mr. Adams' appeal was not filed on time and the administrative law judge lacks jurisdiction (authority) to decide the other issue in this matter.

Here, the claimant/appellant did not have an opportunity to appeal the fact-finder's decision because the decision was not received. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant timely appealed the overpayment decision, which was the first notice of disqualification. Therefore, the appeal shall be accepted as timely.

**The next issue is whether claimant is eligible for unemployment insurance benefits.**  
Iowa Code § 96.19(38) provides:

"Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which either of the following apply:

(1) While employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

Iowa Code § 96.4(3) provides:

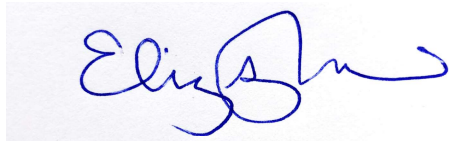
An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Here, claimant was totally unemployed for the weeks ending May 2; May 16; and May 23. Additionally, he was partially unemployed for the week ending May 9. Claimant's periods of total and partial unemployment were all due to COVID-19, in one way or another. Initially, claimant had to stay home because he was potentially exposed to COVID-19 through his son. Claimant would have rather been at work, but he was required to stay home and self-quarantine for two weeks. He then returned and worked a partial week for the employer until the plant was shut down for two weeks. During those two weeks, claimant was totally unemployed and the employer had no work available for him. Claimant is entitled to benefits for these four weeks, provided he is otherwise eligible.

**DECISION:**

The July 17, 2020 (reference 01) unemployment insurance decision is reversed. Claimant was totally unemployed for the weeks ending May 2, May 16, and May 23, 2020. He was partially unemployed for the week ending May 9, 2020. Benefits are allowed, provided he is otherwise eligible.



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April 20, 2021  
Decision Dated and Mailed

lj/kmj